



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
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TO: REPRESENTATIVE GAREY BIES

FROM: Katie Bender-Olson, Staff Attorney

RE: Criminal Court Jurisdiction Over 17 Year-Olds

DATE: September 10, 2013

This memorandum responds to your inquiry regarding “reverse waiver,” which is the transfer of jurisdiction over a juvenile offender from an adult criminal court (“adult court”) to a juvenile court. Specifically, you asked whether a 17 year-old may be “reverse waived” to juvenile court under current law. The answer is “no.”

Juvenile offenders who violate state criminal laws generally have their cases addressed by juvenile courts. However, a 17 year-old offender is considered an “adult” for purposes of criminal prosecution and an adult court is the only court with jurisdiction over that offender. [s. 938.032 (1), Stats.]

Reverse waiver is available to juveniles 16 years of age or younger who are under the original jurisdiction of an adult court. Under current law, an adult criminal court has “original jurisdiction” over a juvenile when the juvenile meets certain criteria. Very generally, an adult court has original jurisdiction over the following juveniles: (1) juveniles who commit battery in a correctional or detention facility or to a probation agent and have a prior adjudication; (2) juveniles 10 years of age or older who commit certain homicide offenses; and (3) juveniles with a prior adult conviction or pending adult case.¹

¹ Specifically, an adult court has original jurisdiction over a juvenile who was previously adjudicated delinquent and is alleged to have committed certain battery or assault while placed in a juvenile correctional facility, a juvenile detention facility, or a secured residential care center prison or who was previously adjudicated delinquent and is alleged to have committed battery to a probation and parole agent or aftercare agent. [s. 938.183 (1) (a), Stats.] Additionally, an adult court has original jurisdiction over a juvenile who is alleged to have attempted or committed first-degree intentional homicide or to have committed first-degree reckless homicide or second-degree intentional homicide on or after the juvenile’s 10th birthday. [s. 938.183 (1) (am), Stats.] Finally, an adult court has original jurisdiction over a juvenile who is alleged to have committed a crime and who has been previously convicted in adult court or has a case pending in adult court. [s. 938.183 (1) (b) and (c), Stats.]

An adult court has original jurisdiction over a juvenile's case under any of the circumstances described above; however, a case may be transferred to juvenile court in certain limited circumstances. A juvenile's case that begins in adult criminal court but is later transferred to juvenile court is said to be "reverse waived."

A court may only grant a reverse waiver if the juvenile proves all of the following: (1) that the juvenile could not receive adequate treatment in the criminal justice system; (2) that transferring the juvenile would not depreciate the seriousness of the offense; and (3) that it is not necessary to keep the case in adult court in order to deter juveniles from committing the violation of which the juvenile is accused. [s. 970.032 (2), Stats.]

The statutory provisions allowing for reverse waiver apply only to a "juvenile." [ss. 970.032 (1) and 971.31 (13) (a), Stats.] Therefore, as discussed above, an adult court does not have authority to transfer a 17 year-old to juvenile court.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

KBO:jal